



JOHN J. GIBBONS FELLOWSHIP IN
PUBLIC INTEREST & CONSTITUTIONAL LAW

HONORABLE JOHN J. GIBBONS

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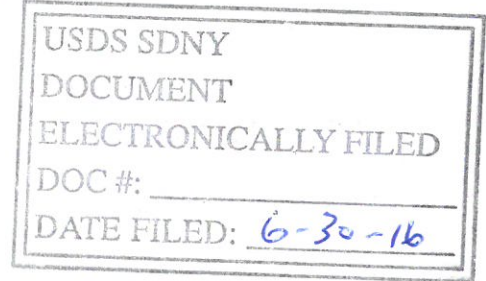
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MEMO ENDORSED

June 23, 2016

VIA CMECF

Honorable Richard Sullivan
United States District Judge
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007



Re: Everytown v. Bureau of Alcohol, Tobacco, and Firearms, 15cv5791

Dear Judge Sullivan,

Please accept this letter, in lieu of a more formal motion, as notice of our intent to seek fees and costs in the above-captioned matter. Under Federal Rule of Civil Procedure 54(d)(2), a party that seeks to recover fees and costs must submit a notice to the court that “specif[ies] the judgment and the statute, rule, or other grounds entitling the movant to the award” and “state[s] the amount sought or provide a fair estimate of it” within fourteen days of judgment. This case formally closed on June 22, 2016 after the parties reached a settlement that fully resolved their substantive disagreements. *See* Dkt No. 25 (granting parties until June 22, 2016 to move to reopen case should their settlement negotiations falter). It is our intent to seek attorney’s fees and costs under the Freedom of Information Act’s fee award provision, which allows recovery of reasonable fees and costs if a party “has substantially prevailed” in its suit. 5 U.S.C. § 552 (a)(4)(E)(i)-(ii). Since the filing of our suit, the defendant — Bureau of Alcohol, Tobacco, and Firearms (“ATF”) — has released documents that it had long withheld from our clients. It is our position that we have “substantially prevailed” because this represents a “voluntary or unilateral change in position by the agency” in response to our lawsuit. *Id.*

We are seeking fees in the amount of \$54,985.50 in fees, as well as \$3141.30 in costs, and have sent a detailed accounting of the time spent on this case to the Government, which is reviewing our submission, with an eye toward resolving this issue without the necessity of litigation. Should these negotiations fail, the Government has agreed not to challenge our right to file a more formal fee application to this Court, although the Government reserves all rights to oppose the application on its merits. Specifically, with the Government’s consent, we respectfully request that the Court allow the parties ninety days within which to negotiate a settlement. If at that time the parties have not resolved the matter, Plaintiff will file a formal fee application to this court.

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If the Court has any questions or concerns, please do not hesitate to contact me or my co-counsel, Lawrence Lustberg. Thank you for Your Honor's kind consideration of this matter.

Respectfully submitted,

/s/ Ana Muñoz
Ana Muñoz
Gibbons P.C.

Cc: Louis Pellegrino, Assistant United States Attorney
Counsel for Defendant

Plaintiff's request is GRANTED. Accordingly, IT IS HEREBY ORDERED THAT, by September 21, 2016, the parties shall jointly file a letter apprising the Court as to the status of Plaintiff's request for attorney's fees and costs.

SO ORDERED
Dated:

6/29/16


RICHARD J. SULLIVAN
U.S.D.J.